IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7208 OF 2004

All Indian Cathay Pacific
Airways Employees Association. Petitioner

Vs.

M/s.Cathay Pacific Airways Limited
and Another. Respondents

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Shri K.S.Bapat for the petitioner.

Smt.Vasanti Kundar for respondent No.1.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 29TH SEPTEMBER, 2004.

P.C.

1. Heard the learned advocates for the parties.

2. The petitioner challenges the order of transfer from Mumbai to Delhi alleging the order of transfer being malafide on three grounds. Firstly that the respondent is not entitled to transfer the petitioner outside Mumbai, secondly that he is a protected workman, and thirdly that the transfer is merely with a view to harass the petitioner as he is Secretary of the Union which pursues the matter in

relation to the charter of demand which was submitted in December, 2000, and inspite of the same, the respondent No.1 had entered into an individual agreement with some of the members of the Union, and in that regard, reference has been made for adjudication to the Tribunal at Mumbai.

3. As regards the ground regarding the absence of power to transfer, the contention of the petitioner is that, at the time when the petitioner was employed, the respondent did not have its office at Delhi. Undoubtedly, considering the nature of business of the respondent/company, the expansion of its business at the places wherever there are airports is obvious, and merely because at the time when the petitioner was appointed, the respondent company did not have its office at Delhi, it can hardly be a justification to contend that the transfer of the petitioner from Mumbai to Delhi is without power to transfer. The power to transfer the employee is not restricted unless specifically agreed upon or the terms and conditions of service provide for such restriction.

4. As regards the contention that the petitioner is protected workman and therefore is not entitled to transfer without following the procedure elsewhere,

there is no material placed on record in support of such claim and that the Courts below have rightly rejected the contention of the petitioner in that regard.

5. The third ground of challenge relates to the alleged harassment to the petitioner by effecting transfer. Admittedly, the charter of demand was submitted in the month of December, 2000 and the reference was made in the year 2003 and the transfer order is dated 15th May, 2004. Merely because the petitioner happens to be the Secretary of the Union and has been employed for a period of 20 years at Mumbai, that cannot be a ground to contend that the transfer, at this stage, has been made to cause harassment to the petitioner.

6. The reply filed by the respondent company before the authority clearly specifies that such transfer was due to exigency of work and administrative requirement. It was also sought to be contended that the post of Customer Service Agent wherein the petitioner has been transferred to Delhi, has been entrusted to a private agency. Even assuming that such work has been entrusted to a private agency, that by itself would not debar the respondent company

from appointing its own officer to provide such services in addition to the services engaged from the private agency in that regard. Being so, this also cannot be a ground to allege amalafide against the respondent company on account of the transfer of the petitioner. The Tribunal, on proper assessment of the materials on record, has arrived at the finding that the transfer has been effected as a part of service exigency and it does not disclose malafide on the part of the respondent company. The said findings cannot be said to be perverse as the same are borne out from the record, there is no case made out for interference therein in exercise of writ jurisdiction under Article 227 of the Constitution of India. Hence, the petition is rejected with no order as to costs.